

PUBLIC ACTS. 1999

CHAPTER NO. 247

SENATE BILL NO. 1350

By Cohen, Crowe, Person, Williams, McNally, Burchett, Carter, Davis, Burks, Kurita

Substituted for: House Bill No. 940

By Scroggs, Dunn, Sargent, Buttry, Montgomery

AN ACT To amend Tennessee Code Annotated, Title 39, Chapter 13 and Title 71, Chapter 6, Part 1, relative to exploitation and abuse of an elderly person or disabled adult.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 6, Part 1, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Elderly person" or "elder" means a person who is sixty (60) years of age or older who has some mental or physical dysfunctioning, including any resulting from age.

(2) "Disabled adult" means a person who is eighteen (18) years of age or older and meets one (1) of the following:

(A) has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment;

(B) lacks the capacity to consent;

(C) has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons; or

(D) has been found to be incompetent by a court of proper jurisdiction.

(3) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts; or to make and carry out reasonable decisions concerning the person or the person's resources; or to protect one's self from neglect, or hazardous or abusive situations without assistance.

(b) In addition to other remedies provided by law, an elderly person or disabled adult in his or her own right, or by conservator or next friend shall have a right of recovery in a civil action for compensatory damages for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such person's or adult's money or

PUBLIC ACTS, 1999
Chapter No. 247

property whether by fraud, deceit, coercion or otherwise. Such right of action against a wrongdoer shall not abate or be extinguished by the death of the person, but shall pass as provided in Section 20-5-106, unless the alleged wrongdoer is a family member, in which case the cause of action shall pass to the victim's personal representative.

(c) Jurisdiction for such action shall be in the circuit or chancery court where the elderly person or disabled adult may reside or where the actions occurred.

(d) Damages shall include compensatory damages and costs where it is proven by clear and convincing evidence that a defendant is liable for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such person's or adult's money or property whether by fraud, deceit, coercion or otherwise. Costs shall include reasonable expenses, including attorney fees. As part of any judgment, the court may declare void and unenforceable any marriage proven to have been entered into as part of a scheme to commit abuse or neglect, sexual abuse or exploitation as defined in this part or theft of such person's or adult's money or property whether by fraud, deceit, coercion or otherwise.

(e) If, in addition to the elements provided in (d), it is proven that the defendant is a licensed health care practitioner or that the actions occurred in a facility or were committed by staff of a facility licensed or required to be licensed under Titles 68 or 33, punitive damages may also be awarded.

(f) Nothing in this section shall be construed as requiring the Department of Human Services to initiate any proceedings pursuant to this section or to act on behalf of any elderly person or disabled adult subject to this section.

SECTION 2. Tennessee Code Annotated, Section 71-6-103(d), is amended by deleting subdivision (2) in its entirety, and by substituting instead the following:

(2) Notify the appropriate licensing authority if the report concerns an adult who is a resident of, or at the time of any alleged harm is receiving services from, a facility that is required by law to be licensed or the person alleged to have caused or permitted the harm is licensed under Title 63.

SECTION 3. Tennessee Code Annotated, Section 71-6-107(c), is amended by deleting the last two (2) sentences of that subsection and by substituting instead the following:

If the adult is in need of a person to manage the adult's affairs or to have other responsibilities not addressed herein, the procedures and requirements for appointment of a conservator pursuant to Title 34, Chapters 11 or 13, must be followed. Nothing in this section shall be construed as requiring the department to initiate proceedings for the appointment of a conservator or a temporary guardian or to accept such appointment if proceedings are instituted or to initiate proceedings under Title 34, Chapters 11 or 13.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

PUBLIC ACTS, 1999
Chapter No. 247

PASSED: May 20, 1999




JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 27th day of May 1999



DON SUNDQUIST, GOVERNOR